

REMARKS

Claims 1-28 are pending. Entry of the amendment is respectfully requested. No new matter has been added. Reconsideration is respectfully requested.

Claims 2, 4, and 25 have been allowed. All remaining claims have been amended to depend therefrom. Thus, Applicants respectfully submit that this application is in condition for allowance. The induction of allowance is greatly appreciated.

Claims 1, 3, 5, 7, 14, 20, 24, 26, 27, and 28 have been amended. Claims 3, 5, 7, 14, and 20 have been amended to depend from allowed claim 4. The subject matter of claims 3, 5, 7, 14, and 20 has also been made to depend from allowed claim 2 via respectively amended claims 1, 24, 26, 27, and 28. That is, claims 1, 24, 26, 27, and 28 correspond to claims 3, 5, 7, 14, and 20 except they depend from claim 2 instead of claim 4. Claims 2 and 4 both include the subject matter of claim 1, from which the subject matter of claims 3, 5, 7, 14, and 20 previously depended.

Applicants respectfully submit that the amended claims do not raise the issue of new matter because the subject matter therein has already been claimed and examined. The amendment also does not present additional claims. Nor do the amended claims present new issues requiring further consideration or search, because the subject matter therein was previously claimed and examined. For these reasons, Applicants respectfully submit that the amendment should be entered and the application passed to issue.

The Applicants respectfully traverse the pending rejections. Nevertheless, the subject matter of the rejected claims has been vacated to advance prosecution. Applicants reserve the right to file another application (e.g., a divisional application) relating to any claim.

Request For Withdrawal Of The Premature Final Rejection

Applicants respectfully submit that the Final rejection should be withdrawn as it is legally improper. For example, a new ground of rejection was applied against non amended claim 27 and the rejection was made Final. Applicants' Response filed July 6, 2006 did not contain any amendment to claim 27. Nor was claim 27 rejected over the prior art. Claim 27 now stands newly rejected over prior art (Graef). It is unclear how the Office can indicate a claim to be allowable over prior art, then in the next Action reject that same (unamended) claim over prior art and make the rejection final.

MPEP 706.07(a) states:

“Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant’s amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).”

Applicants respectfully submit that since claim 27 was not amended in their Response of July 6, 2006, the new ground of rejection made against this claim could not have been necessitated by an amendment thereto. Furthermore, as no information disclosure statement was filed, the new ground of rejection could not have been based on information submitted in an information disclosure statement.

The record shows that the conditions did not meet the legal criteria for applying a Final rejection. Therefore, the Final rejection is *prima facie* premature.

Furthermore, because of the improper finality of the rejection, Applicants have not been given fair opportunity in accordance with 37 C.F.R. 1.111 to properly rebut the Office's new ground of rejection. Applicants respectfully submit that the finality of the Office Action dated July 24, 2006 should be withdrawn.

Conclusion

Again, Applicants respectfully submit that this application is in condition for allowance. The undersigned is willing to discuss any aspect of the Application by telephone.

Respectfully submitted,


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